IN THE HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

WRIT PETITION No. 2076 OF 2002

PETITIONER : Smt.Lakni Bai, wife of Firitram Nishad, aged about 40 years, Sarpanch, Gram Panchayat Tilda, Vikas Khand Baloda Bazar, dist: RAIPUR (C.G).

Vs.

RESPONDENTS : 1. State of Chhattisgarh: Through: Secretary, Panchayat Department, Shastri chowk, Raipur (C.G).

2. Collector, Raipur (C.G).

3. Chief Executive Officer, Janpat Panchayat, Baloda Bazar, dist. Raipur (C.G.)

P.R. No. 2044/02 Received by Shri S.P.Negi Adv. on 8.10.02 dated 8.10.02

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

(27)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

WPRC 2076/02

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DB: Hon'ble Justice K. H. N. Kuranga, C.J.
& Hon'ble Justice L. C. Bhadoo, J.
15/10/2003

Petitioner by Shri Shailesh Ahuja, Advocate.

Respondents No. 1 and 2 by Shri Sunil Sinha, Additional Advocate General.

By this writ petition under Articles 226/227 of the Constitution of India the petitioner has challenged the constitutional validity and the vires of Section 36 (1)(m) of the Chhattisgarh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (for short 'the Adhiniyam) which lays down that no person shall be eligible to be an office-bearer of the Panchayat who has more than two living children one of whom is born on or after 26th day of January, 2001. The challenge to the above clause does not survive in view of the law laid down by the Hon'ble Apex Court in the case of **Javed and others Vs. State of Haryana and others reported in 2003 AIR SCW 3892** and also in view of the order passed by this Court in the case of **Yashwant Kumar Sahu Vs. State of Chhattisgarh and another passed in Writ Petition No. 463 of 2002.** on 12.09.03

ये

(28)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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विरुद्ध

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	Learned counsel for the petitioner argued that the above provision does not apply to the petitioner's case as there is nothing on record, which shows that the third child was conceived and born by the petitioner intentionally. We are unable to accept this contention of learned counsel for the petitioner as the provision of sub-clause (m) of sub-section (1) of Section 36 of the Adhiniyam does not lay down that the disqualification will be incurred only when the third child is born intentionally to the office bearer of the panchayat. A bare perusal of the above provision lays down that if the third child is born on or after 26th day of January, 2001 the office bearer will incur disqualification to continue as office bearer of the Panchayat irrespective of the fact that the child is born to the office bearer with intention or without intention to produce the child. In view of the above there is no force in the petition of the petitioner, the same is liable to be dismissed and it is dismissed. However, the petitioner shall be at liberty to file an appeal before the Director of Panchayat against the order dated 9th September, 2002 by which the petitioner has been declared disqualified to continue as Sarpanch of the Village Panchayat, Tilda, Block- Baloda Bazar,	

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XI-HC-22

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District- Raipur. The petitioner will be entitled to the benefit of the limitation for the time spent by her in litigating before this Court in this writ proceeding.

The parties are entitled for certified copy of this order.

Sd/-
Chief Justice

Sd/-
L.C.BHADOO
Judge

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XI-HC-22

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